

§ 335.402 Amendments to acquisition statements.

(a) Form F-11—If any material change occurs in the facts set forth in the statement required by § 335.401(a) including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file such statement shall promptly file or cause to be filed with the FDIC and send or cause to be sent to the bank at its principal office, by registered or certified mail, and to each exchange on which the security is traded, an amendment disclosing such change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed “material” for purposes of this section; acquisitions or dispositions of less than such amounts may be material, depending upon the facts and circumstances. Three copies of each amendment shall be filed with the FDIC.

(b) Form F-11A—Notwithstanding paragraph (a) of this section and provided that the person or persons filing a statement under § 335.401(b) continue to meet the requirements set forth therein, any person who has filed a short form statement on Form F-11A shall amend such statement within 45 days after the end of each calendar year to reflect, as of the end of the calendar year, any changes in the information reported in the previous filing on that form. Three copies of the amendment, including all exhibits, shall be filed with the FDIC and one each sent, by registered or certified mail, to the bank at its principal office and to the principal national securities exchange where the security is traded. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file under § 335.401.

NOTE: For persons filing a short form statement pursuant to § 335.401(b), see also § 335.401(b) (2), (3), and (4).

[46 FR 25208, May 5, 1981, as amended at 54 FR 53592, Dec. 29, 1989]

§ 335.403 Determination of beneficial owner.

(a) For the purposes of sections 13(d) and 13(g) of the Act a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(1) *Voting power* which includes the power to vote, or to direct the voting of, such security; and/or

(2) *Investment power* which includes the power to dispose, or to direct the disposition, of such security.

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the requirements of section 13(d) or 13(g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

(c) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

(d) Notwithstanding the provisions of other paragraphs of this section:

(1)(i) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (b) of this section, if that person has the right to acquire beneficial ownership of such security, as defined in paragraph (a) of this section at any time within sixty days including but not limited to any right to acquire:

(A) Through the exercise of any option, warrant or right;

(B) Through the conversion of a security;

(C) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(D) Pursuant to the automatic termination of a trust, discretionary account or similar arrangement;

Provided, however, any person who acquires a security or power specified in paragraph (d)(1)(i) (A), (B), or (C) of this section, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person, but shall not be deemed to be outstanding for the purposes of computing the percentage of the class by any other person.

(ii) Paragraph (d)(1)(i) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security and may therefore give rise to a separate obligation to file.

(2) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, under the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(3) A person who in the ordinary course of business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the dis-

position of such pledged securities will be exercised, *Provided, That:*

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with any transaction having such purpose or effect, including any transaction subject to paragraph (b) of this section;

(ii) The pledgee is a person specified in § 335.401(b)(1)(ii), including persons meeting the conditions set forth in § 335.401(b)(1)(ii)(G); and

(iii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged securities; or

(B) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to Regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under section 15 of the Act.

§ 335.404 Disclaimer of beneficial ownership.

Any person may expressly declare in any statement filed that the filing of such statement shall not be construed as an admission that such person is, for the purposes of sections 13(d) or 13(g) of the Act, the beneficial owner of any securities covered by the statement.

§ 335.405 Acquisition of securities.

(a) A person who becomes a beneficial owner of securities shall be deemed to have acquired such securities for purposes of section 13(d)(1) of the Act, whether such acquisition was through purchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as the executors or administrators are qualified under local law to perform their duties.

(b)(1) When two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of a bank, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of sections 13(d) and 13(g)